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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/803,914	03/19/2004	T. Brent Freese	FRE001-088	6779

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EXAMINER

COCKS, JOSIAH C

ART UNIT	PAPER NUMBER
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3749

DATE MAILED: 10/18/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/803,914

Applicant(s)

FREESE ET AL.

Examiner

Josiah Cocks

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 August 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

1. Receipt of applicant's amendment filed 8/10/2006 is acknowledged.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

3. Claims 1-3, 9-14, 16, and 18-20 are rejected under 35 U.S.C. 102(a) as being anticipated by U.S. Patent No. 6,644,302 to Bartley ("Bartley").

Bartley discloses in the specification and Figs. 1-9 an invention in the same field of endeavor as applicant's invention and as described in applicant's claims 1-3, 9-14, 16, and 18-20. In particular, Bartley shows an oven rack that includes a frame portion including front, rear and opposing side rods (see at least Figs. 7A). The front rod includes first and second down-turned segments (see unnumbered vertical portions of brace 32, Fig. 7B) that are joined by a vertically offset portion (see front bar of 36, Fig. 7A). A support platform includes a first plurality of spaced support members (see at least unnumbered bars in Fig. 7A) that form a food item support zone and a second plurality of spaced support members (at least angled portions of 32, Fig. 7B) that are arranged as recited.

In regard to the recitation of claims 1 and 18 of continuous and integrally formed first and second down-turned segments, the examiner notes that the lower handle (26) shown at least in Figs. 6 and 7 is shown to be continuous with the front portions of the oven rack. Further, as shown particularly in Fig. 6A the handle when attached or connected to the front of the rack appears to have a smooth, continuous joint (note no attachment lines are shown at the corners 30). Regarding the recitation of “integrally formed” it has been held that the term “integral” is sufficiently broad to embrace constructions united by such means as fastening and welding. *In re Hotte*, 177 USPQ 326, 328 (CCPA 1973). In this case, the means of attachment of the handle (26) to the front of the rack is properly regarded as “integrally formed” based at least on the broad construction considered by the court in *Hotte*.

In regard to the recitation that the support members are fixed to select ones of the front, rear and opposing sides, the unnumbered support members shown at least in Fig. 7A are considered to be fixed the sides of the rack in the manner recited.

In regard to at least claim 2, note food access zone (18) is established vertically below a plane defined by the food item support zone.

In regard to at least claim 3, note that the angled portions of brace (32) are the bend portions recited.

In regard at least to claim 4, in examining this claim, the unnumbered rod shown nearer the center of the rack in Fig. 7A is considered to be properly considered to be a “rear” rod compared with the front rod and

In regard to at least claims 5-6, the unnumbered rod shown in Fig. 7A contacting the end of notch (18) is considered the rear rod, and the offset portions (angled portions of 32) are arranged as recited.

In regard to at least claims 7 and 8, note the relative size of the support platform and the offset portion is shown in Fig. 7A and 7b as recited, i.e. depth is less than one-half and less than one-quarter than the support platform.

In regard to at least claims 9-12, note Fig. 7A and the unnumbered segments of brace (36) extending laterally outwardly and the first and second in-turned/curved segments (30) of the front rod.

In regard to at least claims 13 and 14, note col. 4, lines 24-29 describing the grasping of brace (36).

In regard to claim 16, note at least the unnumbered cross rod shown in Fig. 7A, that is spaced from the unnumbered rear rod.

In regard to claim 17, the left and right portions of the rack at least shown in Fig. 7A are properly considered to be first and second food item support zones separated by the access zone (18).

In regard to at least claims 18-20, note that the oven rack (for instance that of Fig. 7) is provided in an cooking appliance (19) having an oven cavity as recited (see Fig. 5).

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

6. Alternatively, Claim 1-3, 9-16, and 18-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,644,302 to Bartley ("Bartley").

Bartley is considered to disclose substantially all the limitations of applicant's claims 1-3, 9-16, and 18-20 (note discussion above regarding the teachings of Bartley). As was noted above, the term "integral" is broad enough to include various means of fastening and does not require that the components that are "integrally" formed or connected necessarily be a single piece of material. However, even if such a meaning were attributed to the phrase "integrally formed" such a limitation would also not serve to patentably distinguish applicant's invention over Bartley. The examiner notes that it has been held "that the use of a one piece construction instead of the structure disclosed in [the prior art] would be merely a matter of obvious engineering choice." (See MPEP 2144.04(V)(B) citing *In re Larson*, 340 F.2d 965, 968, 144

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USPQ 347, 349 (CCPA 1965)). Therefore, even if “integrally formed” were considered to mean connote a single piece of material, in Bartley making the handle (26) a single piece with the front of the oven rack would be merely an obvious matter of design choice based at least on the holding of *Larson*.

In regard to at least claim 15, through Fig. 7 of Bartley does not appear to two distinct food item access zones, Fig. 4A of Bartley clearly suggests multiple notches/access zones. The examiner considers that it would be obvious to a person of ordinary skill in the art to incorporate the multiple access zones of the type shown in Fig. 7 as taught by the embodiment of Bartley’s rack shown in Fig. 4 as two notches are noted to be desirable when the rack is used, for instance, with pizza stones (see col. 3, lines 50-53).

Alternative Claim Rejections

Claim Rejections - 35 USC § 102

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claims 1-17 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 3,012,554 to Hirsch (“Hirsch”).

Hirsch discloses in the specification and Figs. 1-3 an invention in the same field of endeavor as applicant’s invention and as described in applicant’s claims 1-17. In particular,

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Hirsch shows an oven rack having a frame portion including front, rear and opposing side rods (11 and 11a) where the front rod includes first and second down-turned segments (16) that are joined by a vertically offset portion (12a) (note particularly Fig. 2). A support platform includes a first plurality of spaced support members (12) that form a food item support zone and a second plurality of spaced support members (see the middle portions 12a that do not form the front rod) that are arranged as recited.

In regard to the recitation of claims 1 and 18 of continuous and integrally formed first and second down-turned segments, as shown particularly in Fig. 2, the first and second down-turned segments (16) are considered to continuous and integrally formed with the front bar of the rack as recited.

In regard to the recitation that the support members are fixed to select ones of the front, rear and opposing sides, the support members (12) are fixed to the sides (at least 11 and 11a) in the same manner as recited in applicant's claims.

In regard to at least claim 2, note the food access zone formed by the interior segments (12a) is established vertically below a plane defined by the food item support zone.

In regard to at least claim 3, note that the angled portions of brace (16) are the bend portions recited (see Fig. 2)

In regard at least to claim 4, note rear rod (12a, i.e. the topmost 12a rod of Fig. 1) and the lower vertical portion formed by the rods (12a) extends from front to back.

In regard to at least claims 5-6, note the offset portions (Fig. 3) and the lower portions (12a) are in a plane vertically below the support member formed by rods (12).

In regard to at least claims 7 and 8, note the relative size of the support platform and the offset portion is shown in Fig. 2 as recited, i.e. depth is less than one-half and less than one-quarter than the support platform.

In regard to at least claims 9-12, note at least the bend portions of bends (16).

In regard to at least claims 13 and 14, the vertically offset portion of Hirsch would be capable of functioning as a handle.

In regard to claim 15, the first and second distinct food item access zones are considered to be formed at the front and back of the grate of Hirsch

In regard to claim 16, note cross bar (21).

In regard to claim 17, the left and right portions (12) are first and second food item support zone portions as recited.

Claim Rejections - 35 USC § 103

9. See statutory basis recited above.

10. Claims 18-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 3,012,554 to Hirsch ("Hirsch") in view of U.S. Patent No. 6,112,916 to Barnes et al. ("Barnes").

Hirsch discloses substantially all the limitations of claims 18-20 (see discussion of the disclosure of Hirsch above). However, in regard to claims 18-20, while the rack of Hirsch would necessarily be used in a cooking appliance, Hirsch does not expressly provide for such an

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cooking appliance having an oven cavity as recited and supporting the oven rack on the side walls of the oven cavity.

Barnes teaches a cooking appliance with an oven rack in the same field of endeavor as both applicant's invention and Hirsch. In Barnes, the cooking appliance (2) includes an oven cavity (10) having the walls as recited and supporting the oven rack on the walls (see Fig. 1).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to incorporate the oven rack of Hirsch in a cooking appliance as taught by Barnes for the desirable purpose of supporting items to be cooked within the oven cavity of the cooking appliance (see Barnes, col. 1, lines 52-65).

Response to Arguments

11. Applicant's arguments filed 8/10/2006 have been fully considered but they are not persuasive.

Applicant has argued that the limitations that the amendments to claims 1 and 18 to recite that the down-turned segments are "continuous and integrally formed" distinguishes applicant's invention over Bartley. For the reasons noted above, the examiner does not agree.

Applicant has further argued that Hirsch does not disclose a support platform having a first plurality of spaced support members. The examiner does not agree. As clearly shown in Figs. 1 and 2 of Hirsch, the transverse rods (12a) form an upper platform at the corners of the rack that would be capable of serving as a support platform and a lower platform, configured differently than the upper platform in the middle of the rack that would also be capable of serving as a support platform. The presence of the inset rings (17 and 18) does not somehow

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eliminate the presence of these platforms (formed by rods 12a) that are structurally identical to that of applicant's invention.

Applicant also argues that because ring (18) in Hirsch is able to rotate that the amendment to the claims to recite that the first and second plurality of support members are "fixed" to select ones of the front, rear, and opposite sides rods distinguishes applicant's invention over Hirsch. The examiner does not agree. The support two support platforms are formed by the two configurations of the transverse rods (12a) not by ring (18). As noted above, the rods (12a) are fixed to the side portions (11 and 11a).

In regard to applicant's arguments concerning some of the dependent claims (See response, p. 8) the examiner maintains above noted rejections of these dependent claims. The statement of the rejections clearly identify the structural limitations of this dependent claims in the prior art.

Accordingly, applicant's claims do not patentably distinguish over the prior art of record.

Conclusion

12. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37

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CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Josiah Cocks whose telephone number is (571) 272-4874. The examiner can normally be reached on M-F 8:00-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ehud Gartenberg can be reached on (571) 272-4828. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

jcc
October 3, 2006


JOSIAH COCKS
PRIMARY EXAMINER
ART UNIT 3749